Modern Manufacturing Company, Inc. *and* International Ladies' Garment Workers' Union, Upper South Department, AFL-CIO. Cases 6-CA-11438 and 6-RC-8162

April 30, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On March 31, 1980, Administrative Law Judge Elbert D. Gadsden issued the attached Decision in this proceeding, and, on April 9, 1980, an Errata thereto. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief[1] and has decided to affirm the rulings,[2] findings,[3] and conclusions[4] of the Administrative Law Judge with some modifications and to adopt his recommended Order[5] as modified below.

1. We agree with the Administrative Law Judge that Respondent violated Sec. 8(a)(3) by terminating the employment of employees Carol Waybright, Joan Ball, David Pringle,[6] and Pearl Irene Smith, and by refusing to rehire employee Deborah Lee. In so finding, the Administrative Law Judge concluded that union activity was "substantially if not totally" the cause of the discharges of Waybright and Pringle, "solely" the cause of Ball's discharge and apparently the refusal to rehire Lee, and the "primary" reason for the layoff of Smith. He also found that the asserted reasons given by Respondent for its terminating the employment relationships with these employees were not the "real, sole," or "primary" ones but were advanced as pretexts to conceal the unlawfulness of Respondent's actions. Thus, regardless of such qualifying language as "substantially if not totally," it is clear that the Administrative Law Judge deemed the terminations and the refusal to rehire these employees to be motivated wholly by their union activities. Consequently, in affirming the Administrative Law Judge's findings with respect to the termination of these employees, we find that none of them would have been discharged, laid off, or refused hire by Respondent, as the individual case may be, absent their union activities. *Limestone Apparel Corp.*, 255 NLRB 722 (1981).

2. In its exceptions, Respondent contends, *inter alia*, that the Administrative Law Judge erred by finding several statements where the Respondent, through its agents or supervisors, asked employees to vote "NO" in the election to be violations of Section 8(a)(1). We find no merit to this contention. Standing alone, such a request might not constitute unlawful conduct. However, such is not the case here. Throughout the Union's organizational campaign, Respondent engaged in various unlawful activities, including threats, coercive interrogations, and terminations based on employee union activi-

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] The Administrative Law Judge, in the final paragraph of the section of his Decision entitled "On What Date Was The First Company Meeting?", found that JoAnn Cox was laid off in violation of Sec. 8(a)(3) and (1). However, the Administrative Law Judge's recommended Conclusions of Law, Order, and notice reflect no such finding. Although we agree with the Administrative Law Judge that President Cassela's statement at the March 24, 1978, meeting that he terminated one employee and laid off another for engaging in union activity constituted a violation of Sec. 8(a)(1), we note that neither the complaint nor the General Counsel's brief to the Administrative Law Judge allege that Cox's layoff violated Sec. 8(a)(3), and that this issue was not fully litigated during the hearing. Accordingly, we disavow the Administrative Law Judge's finding that Cox's layoff violated Sec. 8(a)(3) and (1).

[3] In its exceptions Respondent contends that the Administrative Law Judge erred in finding that Respondent violated Sec. 8(a)(1) by President Cassela's coercive interrogation of employee Deborah Lee in April 1978 because such conduct was not alleged in the complaint. We find no merit to Respondent's exceptions, inasmuch as the matter was fully litigated at the hearing and the record establishes that this conversation took place.

In summarizing his findings in the section of his Decision entitled "Other Interfering, Restraining, Coercive, and Discriminatory Conduct by Respondent Subsequent to March 24, 1978," the Administrative Law Judge listed several incidents and statements involving employee Victoria Jackson which he found violated the Act and attributed all of the unlawful conduct involving Jackson to Manager Opal Shroyer. However, elsewhere in his Decision, the Administrative Law Judge correctly found, as the record reflects, that it was President Cassela, not Shroyer, who came to Jackson's machine on July 13, 1978, to tell her Respondent had helped Jackson and her husband and now Jackson should help Respondent, and that it was Vice President Starkey who made a coercive statement to Jackson on July 14, 1978.

[4] The Administrative Law Judge, in his Conclusions of Law, failed to set forth a description of the bargaining unit found appropriate by him. Further, pars. 2(c) and (d) of the Administrative Law Judge's recommended Order contain certain findings regarding the unit placement of particular employees which are best designated as conclusions of law. We have, therefore, modified the recommended Conclusions of Law and Order, accordingly.

[5] In adopting the Administrative Law Judge's recommendation that Respondent be required to cease and desist from "in any other manner" interfering with, restraining, or coercing its employees in the exercise of their Sec. 7 rights, we find that Respondent "has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights." *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979). We shall, therefore, incorporate this broad cease-and-desist language in the Order attached hereto.

We shall delete from the last line of the second paragraph of "The Remedy" recommended by the Administrative Law Judge the following language: "Except as modified by the wording of such recommended Order."

[6] In light of our finding that the discharge of David Pringle violated Sec. 8(a)(3), we find it unnecessary to pass on the Administrative Law Judge's finding that Pringle's discharge was also in violation of Sec. 8(a)(4).

ties. An employee faced with a request to vote "NO" from his supervisor or employer in these circumstances might justifiably infer that his job is dependent on how he votes.[7] Thus, we find such a request becomes coercive conduct when placed in a letter to employees stating that the Employer is aware of the employees' union activities; when made to an employee shortly after that employee's work was, according to the employee, unjustifiably criticized; when made while implying to an employee that she owed the Company something because the Company had hired her at a time when there was no job to be filled; or when made in conjunction with such statements as "If the Union came in, the Employer would lose work" or that a nearby plant "had laid off a large number of employees after unionization." Therefore, in the context and the atmosphere in which they were made, the Administrative Law Judge made the proper determinations. Also, we agree with the Administrative Law Judge's finding that President Cassela's statement during a company meeting on July 7 that the employees and the Company could accomplish as much, if not more, without the Union was a violation of Sec. 8(a)(1) because it unlawfully implied that the Employer might grant benefits if the employees voted against the Union. In this regard, we note that on the same day Vice President Sharkey suggested to an employee that she get "the girls" together in a group to discuss grievances with him, thereby giving impetus to Cassela's remarks.

3. We agree with the Administrative Law Judge that the issuance of a bargaining order is warranted as part of the remedy for Respondent's unfair labor practices, which were flagrant and extensive. During the Union's organizational drive, members of high-level management of this closely held corporation, including the president and vice president, engaged in numerous and persistent acts of unlawful interrogation of employees; created the impression of surveillance of employees' union and protected activities; solicited the aid of employees to defeat the Union; solicited employee grievances; promised employees improved benefits if they voted against the Union; and threatened employees with a reduction in work, layoffs, and plant closure if they selected the Union as their collective-bargaining representative. Confirming its willingness to make good these threats, Respondent unlawfully laid off or discharged four employees, and refused to rehire a fifth. Such unfair labor practices as discharge, coercive interrogation, surveillance, and threats of loss of employment were specifically enumerated by the Supreme Court in *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969), as having the tendency to undermine majority strength and impede the election process. Threats of loss of employment through a reduction in work, layoffs, and plant closure in particular, because they directly effect the livelihood of employees, are matters of the utmost importance to employees, and are therefore likely to have the most substantial and lasting impact on them with respect to their union support. Here, such threats were made by top management officials to individual employees, as well as during a meeting for the entire work force. Similarly, the promise of improved benefits as an inducement for abandoning the Union is conduct which, because of its offer of an economic reward, has a lingering effect on employees and makes slight the possibility of conducting a fair election. Finally, Respondent, by laying off, discharging, or refusing to rehire five union adherents, demonstrated the adverse consequences which could, and would, flow from supporting the Union. Such conduct has long been recognized as striking at the very heart of employee union and protected concerted activity. We therefore find that Respondent's conduct was calculated to have an adverse and lasting effect on the employees' support of the Union and their ability to exercise a free choice in any election which the Board might conduct. Accordingly, we find that conditions necessary for providing a fair expression of employee sentiments in a Board-conducted election will not be achieved by a traditional cease-and-desist order, and that a bargaining order is warranted in order to best protect the rights of the employees. *Gissel, supra; Beasley Energy, Inc., d/b/a Peaker Run Coal Co., Ohio Division #1*, 228 NLRB 93 (1977).[8]

[7] An inference fully warranted in the light of such conduct as that of President Cassela, who, at a meeting with the employees on March 24, told them, *inter alia*, that he had fired one employee (Waybright) and laid off another (Cox) for union activities, and that he was embarrassed to have to hire one of them (Cox) back because he found her not to be involved with the Union; that there was plenty of work, but that "if the Union continued he wouldn't promise anything." The overall impact of these remarks was clear: management considered continued employment incompatible with engaging in union activities or supporting the Union. And, since these remarks were made by the highest management official, the employees could reasonably believe that his comments represented Respondent's official position. In such circumstances a request to vote no (or a statement in a March 7 letter to employees that the Company did not want them to sign union cards) is likely to be construed by employees as a veiled threat of reprisal rather than an innocent or innocuous campaign appeal.

[8] In adopting the Administrative Law Judge's finding that the Union held a card majority on April 24, 1978, we note that on that date the number of employees in the unit totaled 81 (including Carol Jo Tenney and Carol Waybright, and excluding Tip Starkey), and that 44 of these employees had signed valid authorization cards. Since it is well settled that pursuant to a remedial bargaining order an employer's obligation to bargain generally commences on the date the union obtains a majority after the employer has embarked on an unlawful course of conduct, rather than the date of the Union's greatest majority as found by the Administrative Law Judge, we shall order Respondent to bargain with the Union as of April 24, 1978. See *Allis Chalmers Corp.*, 234 NLRB 350

Continued

AMENDED CONCLUSIONS OF LAW

In the section of the Administrative Law Judge's Decision entitled "Conclusions of Law," insert the following as paragraphs 13, 14, 15, and 16 and renumber former pargraphs 13, 14, and 15, accordingly.

"13. The following constitutes a unit appropriate for purposes of collective bargaining:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its Buckhannon, West Virginia, facility; excluding office clerical employees, sales employees, and guards, professional employees and supervisors as defined in the Act.

"14. Tip Starkey is not part of the appropriate unit because his interests are more aligned with those of management than with those of the employees.

"15. Carol Jo Tenney is part of the appropriate unit because her interests are aligned with those of unit employees.

"16. Since Carol Waybright was unlawfully terminated by Respondent, she remains a part of the appropriate unit."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Modern Manufacturing Company, Inc., Buckhannon, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order, as so modified:

1. Substitute the following for paragraph 1(b):

"(b) In any other manner interfering with, restraining, or coercing its employees in the exercise and enjoyment of rights guaranteed them by Section 7 of the National Labor Relations Act, except to the extent that such rights may be affected by such lawful agreements in accord with Section 8(a)(3) of the Act."

2. Substitute the following for paragraph 2(a):

"(a) Recognize and, upon request, bargain collectively from April 24, 1978, with the International Ladies' Garment Workers' Union, Upper South Department, AFL-CIO, as the exclusive representative of the employees in the following appropriate unit, and, if any understanding is reached, embody such agreement in a written, signed contract:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its Buckhannon, West Virginia, facility; excluding office clerical employees, sales employees and guards, professional employees and supervisors as defined in the Act."

3. Delete paragraphs 2(c), (d), and (e) and reletter the subsequent paragraphs accordingly.

4. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT threaten employees with less work or layoffs should they select the International Ladies' Garment Workers' Union, Upper South Department, AFL-CIO, or any other organization, as their collective-bargaining representative.

WE WILL NOT threaten employees with plant closure should they select the above-named or any other labor organization as their collective-bargaining representative.

WE WILL NOT threaten employees with economic reprisal and/or tell employees it would be futile to select the above-named or any other labor organization as their collective-bargaining representative.

WE WILL NOT threaten employees by telling them the Company has terminated an employee for engaging in activities on behalf of the above-named or any other labor organization.

WE WILL NOT tell employees not to sign union authorization cards.

WE WILL NOT coercively interrogate employees about their union activities, membership, and sympathies, or the union activities, membership, and sympathies of other employees.

WE WILL NOT solicit employees' grievances in order to dissuade them from selecting the

(1978); *Morse's Foodmart of New Bedford, Inc.*, 230 NLRB 1092 (1977). For the reasons cited in his separate opinion in *Beasley Energy Inc., d/b/a Peaker Run Coal Co., Ohio Division #1, supra*, and *Hambre Hombre Enterprises Inc., d/b/a Panchito's*, 228 NLRB 136 (1977), Member Fanning would make the bargaining order prospective as there is no evidence that the Union demanded and Respondent refused to bargain even though, as of April 24, 1978, such a demand could have been made.

above-named or any other labor organization as their collective-bargaining representative.

WE WILL NOT ask employees to tell other employees not to select the above-named or any other labor organization as their collective-bargaining representative.

WE WILL NOT tell employees our Company is against the above-named or any other labor organization and that the Company will do anything to stop a labor organization from becoming their collective-bargaining representative.

WE WILL NOT layoff, discharge, or refuse and fail to recall, or otherwise discriminate against, employees in order to discourage membership in or support of the Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise and enjoyment of rights guaranteed to them by Section 7 of the National Labor Relations Act, except to the extent that such rights may be affected by such lawful agreements in accord with Section 8(a)(3) of the Act.

WE WILL offer Carol Waybright, Joan Bell, Pearl Irene Smith, Deborah Lee, and David Pringle immediate and full reinstatement to their former positions, or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights previously enjoyed, and make them whole for any loss of pay suffered by reason of our discrimination against them, with interest.

WE WILL recognize and, upon request, bargain collectively with International Ladies' Garment Workers' Union, Upper South Department, AFL-CIO, as the exclusive representative of the employees in the following appropriate unit, and, if an understanding is reached, embody such agreement in a written, signed contract:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its Buckhannon, West Virginia, facility; excluding office clerical employees, sales employees and guards, professional employees and supervisors as defined in the Act.

All of our employees are free to become or remain, or refuse to become or remain, members of International Ladies' Garment Workers' Union, Upper South Department, AFL-CIO, or any other organization.

MODERN MANUFACTURING COMPANY, INC.

DECISION

STATEMENT OF THE CASE

ELBERT D. GADSDEN, Administrative Law Judge: Upon original and amended charges of unfair labor practices filed on July 17 and August 28, 1978, respectively, by International Ladies' Garment Workers' Union, Upper South Department, AFL-CIO, herein called the Petitioner or the Union, against Modern Manufacturing Company, Inc. (Case 6-CA-11438), herein called Employer or Respondent, an original and an amended complaint was issued by the Regional Director for Region 6, through the General Counsel of the National Labor Relations Board, on October 12, 1978, and February 2, 1979, respectively. An amended charge was filed by the Petitioner-Union on January 22, 1979, and an order consolidating herewith Case 6-RC-8162 involving the same parties was issued by the Regional Director for Region 6 on January 31, 1979. Respondent filed an answer and an amended answer on August 28, 1978, and February 8, 1979.

In substance, the amended complaint alleges that on various dates between March 24 and July 14, 1978, Respondent threatened its employees with less work, with layoffs, with plant closure, with economic reprisal, by telling employees it would be futile to unionize, telling employees it had terminated an employee because of union activity, telling employees not to sign union cards, soliciting employee grievances in order to dissuade them from unionizing, interrogating employees concerning their union activities, membership, and sympathies and the same of other employees, asking employees to tell other employees not to select the Union as their representative, and by telling employees Respondent was against the Union and would do anything to stop the Union from becoming the employees' collective-bargaining representative and to stop all union activities, Respondent violated Section 8(a)(1) of the Act; and that by discriminatorily discharging several employees and laying off other employees, because of said employees' membership in, and activities on behalf of, the Union, Respondent violated Section 8(a)(3) and (1) of the Act; that Respondent violated Section 8(a)(1), (3), and (4) of the Act by discharging an employee because he gave testimony on behalf of the Union in a Board proceeding; and that, since on or about April 24, 1978, the Union has been the collective-bargaining representative of Respondent's employees.

The Respondent filed an answer and amended answers on August 28 and October 23, 1978, and February 7 and 9, 1979, respectively, denying the allegations set forth in the amended complaint.

The hearing in the above matter was held before me on April 16, 17, 18, and 19 and May 22, 23, and 24, 1979. Briefs have been received from counsel for the General Counsel, counsel for the Respondent, and counsel for the Charging Party, respectively, which have been carefully considered.

Upon the entire record in this case and from my observation of the witnesses, I hereby make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a West Virginia corporation with its sole facility located in Buckhannon, West Virginia, where it is engaged in the manufacture and nonretail sale of women's clothirg. During the last 12 months, immediately preceding the issuance of the complant and notice of hearing herein, Respondent shipped products valued in excess of $50,000 from its West Virginia facility directly to points located outside the State of West Virginia.

The complaint alleges, Respondent admits, and I find that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, Respondent admits, and I find that International Ladies' Garment Workers' Union, Upper South Department, AFL-CIO, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background Facts*

The corporate Respondent's sole facility is now, and since 1972 has been, located in Buckhannon, West Virginia, where it is engaged in the manufacture of women's clothing (blouses, dresses, and pantsuits), pursuant to work contracted principally with Stanley Fiel of Cleveland, Ohio, over the past 8 or 9 years. Respondent is owned by the persons and/or officers with the percentage of shares as follows: Anthony Cassela, president, 33 percent; Clifton Starkey, vice president, 34 percent; and Jane Starkey, sister-in-law of Clifton Starkey, 33 percent.

Respondent employs Vice President Clifton Starkey's son, Tip Starkey, and daughter, Carol Jo Tenney, but neither of them is an owner of Respondent.

The plant is divided into four departments, namely, cutting, stitching, pressing, and shipping, all of which are located under one roof without partitions. Respondent has been in business for 10 years. It started with 8 employees and now has approximately 80 employees.

At all times material herein, the following persons occupied positions set opposite their respective names, and have been, and are now, agents of Respondent, acting on its behalf and are supervisors within the meaning of Section 2(11) of the Act: Anthony Cassela, president; Clifton Starkey, vice president; and Opal Shroyer, manager.

Although the records show that in its amended answer to the amended complaint herein, Respondent denied paragraphs 12-21 of the amended complaint, it would appear that there is no genuine dispute over paragraph 14 (the appropriate unit for the purposes of collective bargaining), because, as the General Counsel points out, the Regional Director for Region 6 issued a Decision and Direction of Election in Case 6-RC-8162. No substantive argument has been made by Respondent questioning the appropriateness of the unit, and I find that the denial of paragraph 14 in Respondent's amended answer was initially a procedural safeguard, but was not amended to the contrary during the proceeding to show that there is no dispute on the subject.

Accordingly, the following employees of the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its Buckhannon, West Virginia, facility; excluding office clerical employees, sales employees and guards, professional employees and supervisors as defined in the Act.

The undisputed evidence shows that union representatives commenced an organizational drive among Respondent's employees by distributing union literature at the plant on December 21, 1977; that between February 9 and April 25, 1978, the Union secured signatures of employees on a substantial number of authorization cards. On March 24, 1978, Respondent discharged employee Carol Waybright, a principal witness and an alleged discriminatee herein.

The Union filed a petition in Case 6-RC-8162, in an effort to represent Respondent's employees described in the appropriate unit hereinabove described. Other than the said petition, no demand was made upon Respondent for recognition. A hearing in the representation case was held on May 15, 1978, during which the single issue litigated was the status (employee, supervisor, or managerial) of Tip Starkey, son of Respondent's vice president, Clifton Starkey.

The parties stipulated that the only witness supporting the Union's position that Tip Starkey should be excluded from the unit is alleged discriminatee David Pringle.

Respondent filed a request for review of the Regional Director's Decision and Direction of Election. Said request resulted in a decision of the National Labor Relations Board on July 12, 1978, in which Tip Starkey, son of Vice President Clifton Starkey, was permitted to vote under challenge in the election. The election was held on July 14, 1978, and the tally of ballots indicated the approximate number of eligible voters to be 72. There were 32 votes cast for the Union and 34 cast against the Union. Six ballots were challenged, including Carol Jo Tenney's on the basis of her father-daughter relationship to Vice President Clifton Starkey. The ballots of Joan Ball and David Pringle were challenged by Respondent on the grounds that they were terminated prior to the election. The ballots of Carol Waybright and Patty Light were challenged by the Board's agent because their names did not appear on the eligibility list and in fact challenged the ballot of Tip Starkey, who the Board ruled was permitted to vote under challenge.

The Union filed timely objections to the conduct of the election on July 19, 1978, which as amended allege that Respondent interfered with the holding of a fair election by various specified coercive and restraining conduct.

The parties stipulated that the union election was held from 2:30 p.m. to 3:45 p.m. on July 14, 1978.

On November 19, 1978, the Regional Director for Region 6 issued his order directing a hearing on objections and challenged ballots to resolve the issues raised by the objections, and he also issued an order consolidating Cases 6-CA-11438 and 6-RC-8162 for hearing.[1]

B. *The Organizing Activities of Respondent's Employees*

Employee *Barbara Smith* testified that she worked for Respondent at various periods during the last 6 or 7 years, until about late August or early September 1978. She further testified that she first attended a union meeting at Tony Hess' trailer on March 13, 1978. Thereafter, she attended a second union organizing meeting on March 20, 1978, at which time she was given union authorization cards to distribute to other employees. She distributed some of the cards outside the plant and a few cards at the lunch tables inside the plant. She also attended a union meeting on May 3, 1978, at the home of her sister, Irene Smith. Present at that meeting were: Joan Cox, Carol Waybright, and others, the names of whom she cannot recall. She was at work in March when Joan Cox was laid off on or about March 21 or 22 and on March 24, when Carol Waybright was terminated just before lunch. She said after Carol Waybright left the plant, Managers Clifton Starkey and Anthony Cassela held a meeting of employees in which Cassela, according to the testimony of Smith, said:

> A. He said, that there had been *a lot of union activities going on in the shop and that he had fired one girl and laid one off for union activities, but he was embarrassed to have to hire one of them back* and he said there was a lot, well he said that, we had had steady work up until now, but after the union got in we couldn't expect it and then Starkey said that—Starkey said that the union could promise us anything, but he was the one who would give. [Emphasis supplied.]
>
> Q. Do you know which employees he was referring to that had been laid off or fired?
>
> A. Well JoAnn Cox and Carol Waybright.

On April 18, 1978, Opal Shroyer, plant manager, came to Smith's work machine and told her she (Shroyer) was upset and disappointed with her because she had heard that she (Smith) was trying to help the girls get a union in the plant. Smith said she asked Manager Shroyer how she heard that and the latter said, "the girls talk," and then she asked her (Smith) if she had signed a union card. Smith said she told Shroyer "that was my own business," although she did in fact sign a card on March 23, 1978, after being solicited by Charlene Sowards and Bob Farber. She said Manager Shroyer also told her about her (Shroyer) union experience with the garment workers taking money out of her check. Smith thereupon identified a union organization card (G.C. Exh. 7(b)) of Hazel Fitzgerald, whom she witnessed sign the card on March 29, 1978. Smith said several fellow workers saw her sign her union card but, otherwise, she said her solicitations were rather private. She said she had distributed union pamphlets on the parking lot of the plant on May 4, 1978.

Union Representative Charlene Sowards is employed by the International Ladies' Garments Workers' Union. She testified that she leafleted the Respondent's plant on December 21, 1977, and that on March 5, 1978, she and her coworker, Jackson Moore, met with Respondent's employees at the home of Tony Hess. Employees in attendance at that meeting were as follows (G.C. Exh. 8):

Maxine Meyer
Randall Lemons
David Pringle
Melodie Daugherty
Linda Walker
Dorothy Browning
Tony Hess

A second organizing meeting was held on March 13, 1978, at the home of Tony Hess. At that time she and her coworker, Bob Farber, met with the following employees who signed their names to the attendance list (G.C. Exh. 9):

Melodie Daugherty	Carol Waybright
Patty Light	Linda Walker
Donna Orsburn	Dorothy Browning
Joan Ball	David Pringle
Barbara Smith	Randall Lemons
Maxine Meyers	James Foley

At a third meeting held at the home of Tony Hess on March 20, 1978, Union Representative Sowards testified that she and Bob Farber met with the following employees named on the attendance list (G.C. Exh. 10):

James Foley	Melodie Daugherty
David Pringle	Maxine Johnson
Randall Lemons	Shelly Westfall
Paula Carpenter	Brenda Rexroad
Regina Wodzinski	Irene Smith
Doris Simmons	Barbara Smith
Janice Lower	Brenda Hull
Carol Waybright	Maxine Meyers
Linda Walker	Kathy Brooks
Dorothy Browning	

During the latter third meeting, Union Representative Sowards said she gave blank authorization cards to Carol Waybright and Maxine Meyers to distribute among Respondent's employees. Sowards thereupon identified the union authorization cards, with the signatures of which she witnessed the signing as follows:

G.C. Exh.	*Name of Signatory*	*Date Signed*
7(c)	Melodie Daugherty	3/05/78
7(d)	Carolyn Kay Lance	4/03/78
7(e)	Randall Lemons	3/05/78
7(f)	Bonnie Marsh	3/12/78
7(g)	Deltha McCauley	3/21/78
7(h)	Linda Moore	4/11/78
7(i)	Maxine Meyers	3/05/78

[1] The facts set forth above are not disputed and are not in conflict in the record.

G.C. Exh.	Name of Signatory	Date Signed
7(j)	Brenda Rexroad	3/05/78
7(k)	Beth Ann Rice	3/16/78
7(l)	Connie Tenney	3/21/78
7(m)	Lee Ann Tenney	3/21/78
7(n)	Patty Light	4/18/78
7(o)	Loretta Westfall	3/22/78
7(p)	Dorothy Browning	2/21/78
7(q)	Regina Wodzinski	2/09/78
7(r)	Chong Sun Hwang	4/13/78
7(s)	Peggy Nutter	———
7(t)	Donna Orsburn	3/13/78?
7(u)	Marilyn Posey	4/25/78

Union Representative *Robert Farber*, also employed by the International Ladies' Garment Workers' Union (ILGWU), corroborated the testimony of his coworker Charlene Sowards and added that union authorization cards were given to Donna Orsburn, Carol Waybright, Melodie Daugherty, Dorothy Browning, and David Pringle.

Employee *Carol Waybright* testified that she was employed by the Respondent from November 9, 1973, until March 24, 1978, closing collars on a machine which was located between coworkers Geraldine Lewis and JoAnn Ball, each of whom sat 2 or 3 feet away from her. She further testified that, at the end of February 1978, Geraldine Lewis asked her to attend an organizing meeting for the Union. She did not attend the first meeting but did attend the second meeting held on March 13, 1978, and the third meeting held on March 20, 1978. She took some union authorization cards and distributed them to Cheryl Martin, Loretta Westfall, JoAnn Cox, Edith Phillips, Kathy West, and Lea Ann Tenny, either at the lunch table in the ladies room or during breaks. She signed a union authorization card on March 13, 1978, and she witnessed fellow worker JoAnn Cox sign a union authorization card on March 16, 1978.

Waybright identified the union authorization card (G.C. Exh. 7(x)) and testified that she witnessed the signing thereon by the signatory and of her fellow workers in cars on the plant's parking lot. Waybright also acknowledged that she had received previous warnings about talking and her low production; that she had been warned on March 23, 1978, about talking; and that Plant Manager Shroyer spoke to her in 1977 about her talking and her production.

On March 24, 1978, Waybright said, after the morning break Manager Opal Shroyer came to her and told her to quit talking and that if she did not quit she knew what was going to happen. Waybright said she stopped talking. About 10:45 a.m., 65 minutes later on the same morning, Manager Shroyer summoned her to the office and advised her that she was fired. She said she had prior to this incident never been warned that she would be fired for talking, but she had been warned about talking. Waybright continued to testify as follows:

> So I asked her to put in writing why she fired me, and she said, she didn't have to, that I was fired because I was talking, and keeping the other girls from doing their work, and that she didn't have to put in any formal writing, that whenever she tried to be good to us girls, we didn't appreciate it.

Waybright waited and received her check and she left the plant. However, she later returned to the plant and asked Manager Starkey to put the reason for her termination in writing, since Manager Shroyer had refused to do so. Mr. Starkey told her he had never done that before and that he was not going to do it then, and that, if she did not leave the plant he would call the police. She thereupon left the plant. Waybright further testified that employee JoAnn Cox was laid off before her on March 17, 1978, however, she had returned to work before Waybright was terminated. She said, that to her knowledge, Cox's layoff and her termination were the first such work interruptions Respondent had ever made. In reference to questions regarding the operations or the identity of the machines on which they worked, Waybright said the machines do not all operate at the same rate of speed.

The parties stipulated to the admission of the following authorization cards:

G.C. Exh.	Name of Signatory	Date Signed
7(i)	Joan Ball	3/13/78
7(z)	Beverly Ann Posey	3/20/78
7(aa)	Paula Carpenter	3/20/78
7(bb)	Iona Duke	3/16/78
7(cc)	Katrina Harris	3/15/78
7(dd)	Maxine Johnson	3/15/78
7(ee)	Debra Lee	3/22/78
7(ff)	Patty Light	3/13/78
7(gg)	David A. Pringle	3/05/78
7(hh)	Pearl Irene Smith	3/15/78
7(ii)	Linda K. Walker	3/05/78

C. *Union Activity*

Employee Joan Ball testified that she was employed by Respondent from January 18 until June 23, 1978. She said she distributed union authorization cards during the lunch period in the lunchroom, and distributed union leaflets on the plant's parking lot on May 3, 1978, along with Carol Waybright, Shelly Westfall, Irene Smith, and Barbara Smith, the committee for the Union. While they were distributing leaflets on the parking lot she saw Manager Shroyer, Vice President Starkey, and President Cassela standing on the steps of the plant watching them distribute leaflets.

In the afternoon on June 22, 1978, Ball said plant secretary Connie (Jenkins) Ware came to her machine and informed her that her daughter was critically ill and there was an emergency call in the office. Learning that her daughter, who had a baby 5 days before, was hemorrhaging, she obtained permission from Vice President Starkey to leave. On June 23, her husband called the plant at 6:30 a.m. to report that she could not report for work because she had to watch the baby since her

daughter remained in the hospital. Manager Shroyer told her husband if she (Ball) could not come to work that day to consider herself dismissed. After her husband called the plant at 6:30 a.m. she received a message from her son from Manager Shroyer that if she did not report for work that day she may consider herself as having quit. She did not contact the plant on Saturday, Sunday, or on Monday to give an explanation for her absence or to inquire about her job status. Prior to this incident Ball said she had missed 2 days from work when her son had an operation about a month before. She said she returned to work and was not given any warning about absences or that she would be terminated for being absent.

Joan Ball further testified that on March 24, 1978, Manager Opal Shroyer came to the work station of Carol Waybright, who worked next to her, and told Waybright that she (Shroyer) would have no talking. Manager Shroyer returned 15 minutes later and told Waybright she wanted to see her in the office. Waybright accompanied her to the office but did not return. This occurred about 11 a.m. During the interim, between Manager Shroyer's first and second visits to the machine of Waybright, Ball said she did not hear Waybright talking at all and that Waybright has never disrupted her work. Subsequent to Waybright's departure from the plant at 11 a.m., a meeting was called of all employees in the lunchroom. Present for management were: President Anthony Cassela, Vice President Clifton Starkey, and Manager Opal Shroyer, all of whom testified that President Cassela spoke to the employees. Ball testified as follows:

> A. Well, he said when he come in that day, that he had seen the girls talking, you know, backwards and forth at the machines, and that he didn't want the union in there, and that he didn't want the union in here, and that he didn't want them discussing it on company time.
>
> If they wanted to discuss it, to discuss it, over in the corner, or on their own time, and he said *that he had laid one girl off, and had had to fire one over union matters, and he had been placed in an embarrassing situation, of having to call the one back, when he found out she wasn't involved*, and he said there was plenty of work in there, for the girls then, but if the union continued, that he wouldn't promise anything. [Emphasis supplied.]

Ball said "the other" to whom President Cassela referred was JoAnn Cox. She said that during her working tenure with Respondent, she had never known of any employee to be fired by Respondent, and she said everybody in the plant talked and Waybright did not talk anymore than any other employees. In fact, Manager Shroyer would walk through the plant telling the girls, "not to loud girls."

Joan Ball witnessed the signing of the following cards:

G.C. Exh.	*Name of Signatory*	*Date Signed*
7(jj)	Shelly Westfall	3/16/78
7(kk)	Paulette Russell	4/03/78

D. *Organizational Activity of Respondent's Employees*

Respondent (President Anthony Cassela, Vice President Clifton Starkey, and Assistant Plant Manager Opal Shroyer) contends that it first learned about the organizing activities of its employees after the discharge of Carol Waybright on March 24, 1978. The credited testimony of record, however, reveals that the Union distributed leaflets on Respondent's parking lot as early as December 21, 1977; that as early as February 1978 the Union visited homes of Respondent's employees and commenced soliciting signed authorization cards from the employees; and that said solicitation campaign continued through March and April 1978.

Employees met in union meetings with union representatives on March 5, 13, and 20, 1978, during which time the advantages of the Union and an approach for organizing the plant were discussed. Several employees were given authorization cards to distribute among their fellow employees, which the said employees distributed in the plant's lunchroom, in the ladies' room, during breaktime, and on the plant's parking lot. There were 19 employees in attendance at the last organizing meeting and a total of 22 employees attended at least 1 if not all 3 meetings in March.

Dischargee Carol Waybright attended the union meeting on March 13, when she signed an authorization card (G.C. Exh. 7(u)), and the meeting held on March 20, when she took some authorization cards with which she solicited the signature of Joan Cox on March 16, and several other fellow employees in the plant's lunchroom during lunchtime and break periods, in the ladies' restroom, and on the plant's parking lot. Other employees involved in such widespread union solicitations prior to March 24 were: Joan Ball and Barbara Smith. Several card signers testified that they were approached by Waybright and Ball, and that they signed authorization cards either in the plant's lunchroom during lunch or break periods, in the ladies' room, or on the plant's parking lot. As a result of the Union's solicitation efforts, 32 single-purpose union authorization cards were signed by employees before March 24, 1978. Two cards were signed in February and at least 30 of Respondent's employees signed a union authorization card between March 5 and 24, 1978.

The undisputed evidence of record shows that employee JoAnn Cox signed a union authorization card (G.C. Exh. 7(w)) on March 16, 1978, and that she was laid off by Respondent on Tuesday, March 17, 1978, but recalled to work before March 24, 1978. Dischargee Carol Waybright has been in the employ of Respondent from November 9, 1973, until she was terminated by Respondent on March 24, 1978. Consequently, I conclude and find upon the foregoing credited evidence that, beginning in February, but more particularly in March,

prior to March 24, 1978, Respondent's employees were engaged in activities (in and outside the plant) on behalf of the Union.

E. *Respondent's Discharge of Carol Waybright*

The essentially uncontroverted evidence of record shows that Carol Waybright has been in the employ of the Respondent for 4-1/2 years. She has been a rather loquacious employee during her entire working tenure with the Respondent, among all of Respondent's employees who generally engage in some conversational talk while at work in the unpartitioned plant shop. Management (Starkey and Manager Shroyer), from time to time, would talk to employees about talking while at work. The record further shows and, as a matter of logic, I thereupon conclude and find that talk among the employees in the plant increased during the months of March and April 1978, as a result of the Union's organizing campaign.

During the early morning of March 24, 1978, Vice President Starkey called Manager Shroyer's attention to the fact that Carol Waybright was up from her sewing machine talking with her working neighbor, Kathy West. Manager Shroyer went to both employees and ordered Waybright to sit down, and told both employees to stop talking, that they had to work. Shortly thereafter, Vice President Starkey observed considerable talk among employees and he approached and spoke to employees Melodie Daugherty, Bonnie Marsh, Linda Malcomb, and Thompson. He told them to be quiet, no talking, he would not put up with it. Thereupon, employee Thompson voluntarily terminated her employment with Respondent.

About 30 or 60 minutes later, Manager Shroyer observed Waybright for 3 or 4 minutes leaning over a bundle of garments to her left, talking to Geraldine Lewis. Neither girl was operating her machine. Shroyer went to Waybright and, according to her (Shroyer), she told Waybright she had already been warned about disturbing other people, that she had not been working, and could be terminated. About 45 minutes later, Shroyer saw Waybright talking to Joan Ball, who sits at Waybright's right. She observed them 3 or 4 minutes and went to Waybright and told her that the next time she caught her disturbing the girls she (Waybright) would be fired. Shroyer said she did not say anything to Joan Ball because Ball went to work immediately. According to Waybright, Shroyer's last warning to her was that, if she did not quit talking, she (Waybright) knew what was going to happen. Waybright said she stopped talking and Joan Ball corroborated her testimony in this regard. Ball also undisputedly testified that Waybright has never disrupted her work; and that talk among employees in the shop was common.

Approximately 45 minutes thereafter, Manager Shroyer testified she saw Waybright leaning over the bundle to her left, talking to Geraldine Lewis presumably about the Union. Shroyer went to Waybright and told her she wanted to see her in the office. Shroyer admitted that she did not say anything to Geraldine Lewis, and it is noted by me that she did not give any explanation why she did not speak to Lewis. In the office, Shroyer told Waybright she had given her every chance, that she had warned her several times, and she was, therefore, fired for disturbing the girls, for talking and not sitting at her machine, and for low production. Waybright simply said, "I know."

In testifying with respect to the work performance of Carol Waybright, Manager Shroyer said Waybright talked excessively 2 weeks before she was fired; that she would tell Waybright her production was low and that she should stay at her machine and work; and that Waybright would say, "I know." Shroyer said the standard production quota for Waybright was either 150 in 2 hours or 600 for all day (6 hours). She said Waybright's production has been lower than her neighbor, Ellen Smith, also a lapel tacker.

Manager Shroyer further testified that *Carol Waybright never made her production the entire time she worked for the Respondent.* At times, she said the production of Waybright and Ellen Smith was pretty close but, during the last 2 weeks of Waybright's employment, Waybright's production was lower than Ellen Smith's. She said prior to March 24 she talked to Waybright about twice a day about her production and offered to help her in any way, and that she would tell Waybright she talked too much and should be working, and Waybright would say, "I know."

I do not credit the testimony of Manager Opal Shroyer with respect to her conclusion and Respondent's contention that Carol Waybright's production was low. I do not credit her testimony in this regard because her testimony is substantially inconsistent with respect to Waybright's production as compared with other girls on quota jobs, and with respect to the girls turning in tickets representative of their production. Such evidence cannot be deemed probative in determining whether Waybright's production was low, or that she was in fact the only one whose production was low. Additionally, when Shroyer acknowledged that she never timed Waybright with Ellen Smith, who did substantially the same work, because Smith was not on the job that long, Shroyer finally admitted that she could not say that production of the employees were even checked every day.[2]

Respondent's rules of discipline provide that violations thereof will result in appropriate disciplinary action

[2] I do not credit Respondent's production reports on which Manager Shroyer testified, because her testimony clearly reveals that such reports were incomplete and of no probative value in supporting a finding that Carol Waybright's production was low as compared to other peer workers. Manager Shroyer admitted that she (Respondent) did not record production statistics every day, nor for the last 2 hours on each day. Consequently, it is therefore possible that a worker (Waybright or others) could be more productive on days for which there is no record, and during the last 2 hours of the workday, as opposed to the first 4 hours of each day. Moreover Respondent's production records for 1 month, January 1978, is an insufficient sample of employees' production records to strike any reasonable correlation on employees' work production differential for a period of several months. Both exhibits could very well have been excluded from admission into evidence as counsel for the General Counsel and counsel for the Charging Party contended. However, I believe their admission serve a more valuable purpose in being on exhibition for examination on review, to eliminate all doubts of its insufficiency. I find Shroyer's contention that Waybright (in its employ 4 years) was a low producer is pretextual. *Southern Paint and Weather Proofing, Inc.*, 230 NLRB 429 (1977).

being taken, even a formal warning or disciplinary layoff; and that a second or subsequent violation of several specified rules could result in termination.

The above evidence presents little or no significant conflict as to the nature and manner of Respondent's discharge of Carol Waybright. However, the primary question presented for determination is whether Respondent's discharge of Waybright was for cause or for the union activities of Waybright and her fellow employees. An objective answer to this question can be formulated only after a careful examination of the events which not only preceded, but, more particularly, those which followed Waybright's involuntary termination. In addressing this question, it is first observed that the testimony with respect to a date on which Respondent held a meeting with employees following Waybright's discharge is highly conflicting.

On What Date Was the First Company Meeting?

As to the correct date on which Respondent held its first meeting with employees following Waybright's discharge, former employees Joan Ball and Bonnie Marsh assuredly and confidently testified that Respondent called the first such meeting of employees in the lunchroom shortly after Waybright was terminated on March 24, 1978. Ball testified that Vice President Clifton Starkey and Assistant Plant Manager Opal Shroyer were present while President Cassela spoke for Respondent. Cassela said:

> When he come [sic] in that day, that he had seen the girls talking, you know, backwards and forth at the machines, and that he didn't want the union there, and that he didn't want them discussing it on company time. If they wanted to discuss it, to discuss it over in the corner, or on their own time, *and he said that he had laid one girl off, and had to fire one over union matters, and he had been placed in an embarrassing situation, of having to call one back, when he found out she wasn't involved*, and he said that there was plenty of work in there, for the girls then, but if the union continued, he wouldn't promise anything. [Emphasis supplied.]

The employees knew Carol Waybright had been discharged on March 24, and that JoAnn Cox had been laid off on March 17.

Bonnie Marsh corroborated Ball's testimony that the above-described meeting was held on March 24, 1978, because she clearly recalls that as the date on which it occurred, and also because she gave a sworn statement (C.P. Exh. 2) to Union Representative Robert Farber on March 27, 1978, during which, and in which, she reported the March 24 meeting. Farber corroborated Marsh's testimony in this regard. Marsh also recalled the March 24 date by her having had to execute a second (replacement) authorization card on that date (March 27), when she informed Farber about Respondent's March 24 meeting. Moreover, she noted the date on a bank deposit slip to preserve the fact.

Respondent's witnesses, employees Portia Fortney, Carolyn Lance, Nancy Pancake, Lucy Cutright and Connie Jenkins Ware, all of whom are still in the employ of Respondent, and most of whom were against the Union, all denied that Respondent (Cassela) called a meeting and spoke to them on March 24, 1978, the day Carol Waybright was discharged. Lucy Cutright testified that the subject meeting was held 2 or 3 days after March 24, and Connie Jenkins Ware testified it was held on a day during the week following March 24, 1978. Vice President Starkey and President Cassela denied the subject meeting was held on March 24, but stated it was held a day during the following week. Neither witness could recall a specific date on which the meeting was held.[3] Other Respondent witnesses were equally, if not more, uncertain of the date on which Respondent held its first meeting.

Having credited the testimony of Joan Ball and Bonnie Marsh, I further conclude and find that Joan Ball's account of President Cassela's speech to the employees on March 24, 1978, was correct and truthful. I also find Respondent's witnesses' account of President Cassela's speech was essentially truthful as far as they testified, but I do not credit their lack of recall for the date on which it was held, and his other remarks amply recited herein by Joan Ball. More emphatically, I was persuaded by Respondent's witnesses in this regard that they were selective in trying to testify in the interest of Respondent, and against the Union's interest, since they are still in Respondent's employ. Additionally, Pearl Irene Smith testified that she recalled the meeting on March 24, 1978, wherein President Cassela stated he had to let one girl go; and Iona Duke, who is still in Respondent's employ, testified that she recalled the meeting being held subsequent to Waybright's discharge on March 24, 1978, wherein someone from management said that one girl was dismissed. *Paul Kossman d/b/a Parkway Center, Inc.*, 240 NLRB 192 (1979).

Consequently, based on the foregoing credited evidence, I conclude and find that subsequent to Carol Waybright's discharge on March 24, 1978, Respondent interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the Act, by threatening employees with less work, layoffs and plant closure if the Union got in, telling them it would be futile for employees to select the Union as their collective-bargaining representative; and

[3] I therefore credit the testimony of Joan Ball and Bonnie Marsh that Respondent held the subject meeting subsequent to Waybright's discharge on March 24, 1978; and that President Cassela told the employees what Joan Ball described he told employees during said meeting. I credit the testimony of Ball and Marsh because their testimony was corroborated by other union witnesses, including Respondent's current employee, Iona Duke. They were positive about the date because Marsh reasonably explained why she recalled that specific date (March 24, 1978). On the contrary, neither President Cassela nor Vice President Starkey, nor any of Respondent's witnesses could recall a more definite date of the first company meeting. I was persuaded by the demeanor of some of Employer's witnesses, as well as by their opposition to the Union, that they did not want to recall or testify to a specific date on which the meeting was held. This is especially so since even management (Cassela and Starkey) could not recall the date on which such meeting was held. For these reasons, I find that said meeting in which President Cassela gave the speech described by Joan Ball was held on March 24, 1978, subsequent to the discharge of Carol Waybright. *The Coca Cola Company, Foods Division*, 196 NLRB 892 (1972).

by telling employees it had just "fired an employee [Carol Waybright] and laid off another [JoAnn Cox], whom it was forced to recall," because both employees, along with other employees, were engaged in organizing activities on behalf of the Union.

Moreover, Respondent (President Anthony Cassela) acknowledged in his meeting with employees on March 24, 1978, *that it terminated Carol Waybright and laid off JoAnn Cox, for engaging in union activity.* Terminating or laying off an employee for such a reason is clearly discriminatory and violative of Section 8(a)(3) and (1) of the Act.

F. *Respondent Threatened and Coercively Interrogated Employees*

April 18, 1978, Assistant Manager Opal Shroyer approached employee *Barbara Smith* at her machine and told her, she (Shroyer) was upset and disappointed with her because Shroyer had heard Smith was helping the girls organize the Union in the plant. When Smith asked Shroyer how she learned that, Shroyer said, "the girls talk," and she asked Smith if she signed a union card. Although Shroyer denied she held such a conversation I do not credit her denial for the reasons hereinafter explained below. On the contrary, I credit the testimony of Barbara Smith in this regard because I was persuaded by her demeanor and by the fact that such conduct by Shroyer was almost established as a pattern throughout the record with other credited employees. I therefore conclude and find that Manager Shroyer interfered with, restrained, and coerced employee Barbara Smith in the exercise of her rights protected by Section 7, in violation of Section 8(a)(1) of the Act.

On the afternoon of March 24, 1978, Manager Shroyer went to the machine of employee Pearl Irene Smith and asked her if her machine was working better and Smith said, "Yes." According to Smith's testimony the conversation continued as follows:

> And then she sat *down and she said are you for or against the union and I said, why, what union or something to that affect, and she says well, they're trying to get a union in here and she said the union is no good, they make you a lot of promises and she said she was strictly against it.*
>
> And *she asked me if I was for it or against and I told her, I didn't know, it just depended on what it was about, and she said, well, just think twice before you get involved with it, just remember, you have a paycheck and a job. [Emphasis supplied.]*

Although Manager Shroyer admitted she had a conversation with Pearl Irene Smith on March 24, she denied the above substance of Smith's account. However, I credit the testimony of Smith over Shroyer's because I was persuaded by Smith's demeanor on the stand that she was testifying truthfully. Meanwhile, I was persuaded by the unconvincing, slow, and somewhat uncertain manner in which Shroyer testified that her denial was not truthful. Consequently, I conclude and find that such questions and statements by Shroyer, a high-level supervisory and managerial employee, constituted coercive interrogation, and threatening and restraining conduct against the exercise of employees' Section 7 rights in violation of Section 8(a)(1) of the Act.

G. *Other Conduct Interfering With, Restraining, Coercing, and Discriminating Against Employees by Respondent Subsequent to March 24, 1978*

Respondent President Anthony Cassela and Vice President Clifton Starkey testified that they consulted with each other in the late afternoon of March 24, 1978, to determine what they were going to do about the employees' unionizing the plant. They made an appointment to meet with attorney Roger Morgan in Clarksburg, West Virginia, on the following day, March 25, at 9 a.m. Morgan referred them to a consulting firm in Atlanta, Georgia, known as Cesco Corporation. They immediately called Cesco Corporation long distance that morning and were advised that Cesco was sending them some literature to distribute to the employees immediately.

President Cassela said he spoke to the employees the next week for about 15 minutes, during which time he went down the list (Court Exh. I) "Do's and Don'ts" with the employees. President Cassela was not able to give a date on which he discussed the contents of the list with employees, but the record shows that in a letter dated March 27, 1978 (G.C. Exhs. 3(a) and (b)), which Respondent contends it received from the consulting firm of Cesco Corporation, Respondent distributed and/or mailed the aforedescribed literature to employees. The letter (G.C. Exhs. 3(a) and (b)), which told employees not to sign cards, was accompanied by pamphlet. Although Respondent was unable to determine the date on which said letter (G.C. Exhs. 3(a) and (b)) was distributed or mailed to the employees, Union Representative Robert Farber credibly testified that he was at the home of employee Maxine Meyers on March 28, 1978, when she showed him a copy of Respondent's letter (G.C. Exhs. 3(a) and (b)). She showed him the letter's envelope which bore the canceled date of March 27, 1978. He recorded that date on a pamphlet which he brought to the hearing to refresh his recollection.

Inasmuch as the above-referred-to letter (G.C. Exhs. 3(a) and (b)) *advised employees not to sign union cards,* such advice from management constituted an interference with, a restraint upon, and coercion against employees in the exercise of their rights guaranteed by Section 7, in violation of Section 8(a)(1) of the Act.

H. *Respondent Threatened, Interrogated, Solicited Grievances, and Made Promises to its Employees To Discourage Their Unionization of the Plant*

Iona Duke had been employed by Respondent from October 1977 to the present time. She testified that in or about mid-April 1978, Manager Shroyer approached her in the shipping department and asked her *what she thought about the Union.* She replied she had not made up her mind. Shroyer denied she made such an inquiry but I credit Duke's testimony for the reasons herein below stated.

Iona Duke further testified that about a week before the union election on July 14, 1978, President Anthony

Cassela told the employees during a company meeting that *the employees and the Company could accomplish as much, if not more, without the Union.* I do not believe that President Cassela denied he held the latter conversation with Duke, but assuming that he did, I credit the testimony of Duke for reasons also herein below stated.

Iona Duke also testified that in July 1978 Vice President Clifton Starkey told her, *if the Union got in, he did not know if he could manage; that he had a heart condition, and, if the Union caused him health problems, his health would come first*; and that on or about July 7, 1978, Vice President Starkey told her *the girls should get together as a group, and, instead of having a stranger out there, get a committee to talk with him. He said the employees should give him another chance, and he asked Duke if she thought it feasible, and Duke said she would have to try and see.* Starkey at first said he did not recall whether he told Duke the girls should get together as a group, and then he changed his testimony and denied he held such conversations with her. Nevertheless, I credit the testimony of Iona Duke with respect to the above-described conversations for the reasons herein below stated.[4]

Finally, Iona Duke also testified that, on the day of the election, July 14, 1978, Starkey told her that due to one of his customers giving contracts to another company, *he did not know if he could compete if the* Union got in, and he hoped that they would give him another chance.

Duke said she saw Starkey talking to individual employees on the day of the election but she did not recall ever hearing Starkey or Cassela say the plant was going to close, or that they were going to lay off girls. I do not discredit the latter statements by Duke because she said she did not *hear* such statements made by Starkey or Cassela. I do not credit her testimony for the truth in this regard because it does not establish that said statements were not made by management (Cassela or Starkey).

Based on the foregoing credited testimony of record, I conclude and find that in April 1978 Manager Shroyer coercively interrogated Iona Duke *by asking her what she thought about the Union*; that in about June 1978, Starkey threatened Iona Duke with possible plant closure by stating that, if the Union got in and caused him health problems, his health would come first; that on July 14, 1978, President Cassela solicited the grievances of the employees by *telling them the employees and the Company could accomplish as much if not more, without the Union*; and that on or about July 7, 1978, Starkey *solicited the grievances of the employees in order to dissuade* them from unionizing, by *suggesting that she get the girls together in a group to discuss grievances with him*; and that, on the day of the election, July 14, 1978, Starkey solicited the grievances of its employees by telling Iona Duke he did not know if he could compete if the Union got in, *and he hoped that the employees would give him another chance.* I find that the above-stated conduct on the part of Manager Shroyer, President Cassela, and/or Vice President Starkey constituted an interference with, restraint upon, and coercion against employees exercise of rights protected by Section 7, in violation of Section 8(a)(1) of the Act.

Employee *Maxine Johnson* had been in the employ of Respondent from December 12, 1977, until August 1978, when she resigned. At the hearing, she testified that toward the end of June 1978, Manager Opal Shroyer came to her work station and asked her why her work was so bad. She told her it was the machine which was not operating properly, and Shroyer said there was nothing wrong with the machine. Later that day, Manager Shroyer *told her she did not see any benefits from the Union when she worked in a unionized plant in Grafton, and told her to vote "No."*

On or about the day of the election (July 14) Clifton Starkey approached Johnson at her machine and gave her a copy of General Counsel's Exhibit 6. He told her that a truckdriver informed him that a Point Pleasant, West Virginia, plant had laid off a large number of employees after unionization and *that he would appreciate it if she would vote "No."* Johnson thereupon identified the following union authorization card, the signature on which she witnessed the signing:

G.C. Exh.	*Names of Signatory*	*Date Signed*
7(mm)	Freida Clark	4/14/78

In clearing up a discrepancy of dates involving Johnson's signing two union authorization cards, Johnson testified that, although she said in her affidavit that both cards were signed in May, she testified that they were signed in May as indicated on the cards. Since the affidavit was made subsequent thereto, she attributed the discrepancy to an honest mistake, and I credit her testimonial explanation in this regard.[5]

I therefore find upon the above evidence that in late June 1978 Respondent (Manager Shroyer) told employee Maxine Johnson to vote "No" in the union election and that, on or about the day of the election (July 14), Respondent (Vice President Clifton Starkey), among other things, asked Johnson to vote "No" in the union election, and that such conduct by Respondent restrained

[4] I do not credit the testimonial denials of Vice President Clifton Starkey and Manager Opal Shroyer in reference to the above conversations they held with employees. In observing both witnesses on the stand, I received the impression that they were both fine and decent people. However, I was persuaded by their demeanor and their testimony that they were so much interested in the Company and so eager to see it remain nonunion that they sought to further that interest initially (March 24, 1978), without any knowledge of the Act, and with unrestrained violations after they became acquainted with the Act, that there violative conduct of the same was almost automatic. Starkey was a very nervous and rambling talker, with a very poor memory for dates and details of past events. Both Starkey and Shroyer's denials were so weak at times that they simply nodded their heads in the negative and had to be asked to make an audible answer. I was easily persuaded by their conduct that they were not testifying truthfully wherever I have credited the testimony of other witnesses over theirs.

[5] I also credit Johnson's testimony over any denials of Starkey and Manager Shroyer because their denials were weak and unconvincing. Furthermore, I discredit their denials because the conversations attributed to them by Maxine Johnson coincide with the pattern and logical consistency of all of the credited evidence of record. *The Coca Cola Company, Foods Division*, 196 NLRB 892 (1972).

and coerced its employees in the exercise of rights protected by Section 7, in violation of Section 8(a)(1) of the Act.

Employee Deborah Lee was in the employ of Respondent from July 1977 to June 16, 1978, when she was laid off. She testified that, during her last week of employment in June, fellow worker Margaret Stanley had less seniority than she did. She attended the company *meeting in April 1978, and* that after the meeting she and fellow worker Patty Light had a conversation with Shephard, a consulting representative on behalf of Respondent, which was as follows:

> THE WITNESS: I asked him if it was true, that the Union fined and assessed you without any reason and that I signed a union card, and if this was true, I was worried about that.
>
> JUDGE GADSDEN: Now, what did he say, if anything?
>
> THE WITNESS: He asked me if I ever went to the union meeting, and *he said go to the union meeting and ask the union representative: if they will give you back my card in the same faith that I had signed it.* [Emphasis supplied.]
>
> JUDGE GADSDEN: Did you do that?
>
> THE WITNESS: Yes.

During the above conversation, Lee said Vice President Starkey was standing about 15 feet away watching them. A short while thereafter, she said President Cassela came to her *and asked her had she been to a union meeting and she said no, but she did sign a union card. President Casella said she was dumb for signing a card, that it was like signing a blank check.*[6]

I conclude and find upon the foregoing essentially undisputed testimony that after a company meeting in April 1978, *President Cassela asked Deborah Lee if she had been to a union meeting and she said, "No," but she did sign a union card. President Cassela told her she was dumb for signing a card, that it was like signing a blank check.* I further find that such conduct by Respondent constituted coercive interrogation by a high-level management official and therefore had a restraining and coercive effect on the exercise of rights protected by Section 7, in violation of Section 8(a)(1) of the Act.

Employee *Victoria Jackson* had been in the employ of Respondent from December 1975 to 1977, and was rehired April 6 until August 1978 when she quit. She testified that when she started to work on the first day April 6, 1978, Manager Shroyer came to her machine and said to her: "I think she told me that she knew that I heard about the Union, from my mother-in-law, who is a floor lady there, *JoAnn Dahlheim and that I should think about it." Manager Shroyer also told her she (Shroyer) was strickly [sic] against the Union and that she (Jackson) should think about it.*

Jackson further testified that on or about July 13, *President Cassela* came to her machine and the following conversation ensued:

> A. *He told me that he had heard that I was on the Union side, and he didn't believe it, and he just wanted to talk to me personally, and he told me that I wasn't hired—or when they hired me, that they really didn't have a job for me, but they made a job for me.* [Emphasis supplied.]
>
> Q. Did he say anthing else to you?
>
> A. *He told me that it was my place to help them out now, he had helped my husband and I out, and now we should help him and his company.* [Emphasis supplied.]

On the day of the election (July 14, 1978), Jackson said Vice President Starkey approached her at her machine and she described his conversation as follows:

> A. He told me that he had heard that I talked to another employee in favor of the union, and he didn't believe it, he thought that I was a better person that than, *and he told me that if I couldn't vote no, not to hurt him, and he accused me to talking to a girl, who sat beside me, Barbara, to being for the Union.*

Vice President *Starkey then asked her to talk to Barbara and some of the other employees to oppose the Union*, but she said she did not do that. She said *he also told her if she could not vote, "no", not to hurt him*; that he told her what the truckdriver told him about the plant in Point Pleasant, West Virginia, that had 25 to 100 people working union shop and he was not sure if that was the way it could be there. He then handed her a copy of General Counsel's Exhibit 6 on the day of the election, but before the election.

Employee *Pamela Anderson* has been in the employ of Respondent from early June to July 1978. On her first day at work, Anderson testified that Manager Shroyer held the following conversation with her:

> A. She told me that there was a union dispute going on and that *she and the company were both strongly against it and that they would do anything to get it stopped*, and I said I understood that. Anderson acknowledged she signed a union authorization card.

On July 14, 1978, before the election, Anderson testified that President Cassela approached her and the following conversation ensued:

> A. He asked me if I was the girl that asked a lot of questions at the union meeting or at the meeting, and *he asked me if I was for or against them*, and I told him that I really hadn't decided . . . .
>
> Q. Did he say anything about your family?
>
> A. Oh yes, *he asked me some questions about my family and he asked me if I liked the work there and I told him yes.*
>
> *And then he said that they didn't need the outsiders from Baltimore coming in and settling their disputes, that all the girls would have had to done was ask and they would have gotten what they wanted.*

[6] Although not alleged in the complaint, the substance of this conversation was fully litigated in this proceeding.

Later that afternoon (July 14), but before the election, Anderson testified that Starkey came to her machine and his conversation with her was as follows:

> A. *Mr. Starkey told me that they would just have to kick the union out because they couldn't afford it, he said if the union came in, they would have to close the plant down and he explained to me about a truck driver that had come* by the night before to deliver some stuff and that the truck driver had told me that he was opening another plant some place, I believe he said in Pennsylvania, and he said that, if the other plant if he sold to the other plant, that he would have to bid lower in order to keep work for us.
>
> And *then he told me that most of the people that were fighting for the union were people that really didn't need the job, they had husbands that were working and they were young people that hadn't been there very long,* and he said that the older employees were more satisfied.
>
> And then he told me if—that he didn't have to give anything he did not want to give, that the union could not give us, get us anything that he didn't want to give us because he didn't have to give anything that he didn't want to give.
>
> And he explained to me that he would have to negotiate, but that he didn't have to give nothing that he didn't have to give.
>
> Q. *Did he ask you anything at the beginning of this meeting?*
>
> A. *He asked me if I was for or against it.*

Employee *Linda Cartright* was employed by Respondent from January 31 until February 23, 1978, when she was laid off. She was a presser and she acknowledged that she signed a union authorization card on March 29, 1978 (G.C. Exh. 7(oo)). She further testified that about 1:30 p.m. on July 14, 1978, Vice President Starkey came to her and said he might get in trouble talking to them (girls) but he felt it was something he had to say, and the conversation continued as follows:

> A. He asked me if I knew that the truck was supposed to come in on Thursday and I said Yes and he said well, the truck driver had called him and the truck had some kind of trouble and he wanted to know if he can come on Friday, and he told him no, he couldn't come on Friday, because we was going to hold an election and the truck driver said, what for, and he said for a union, and he said some of the girls don't feel that I've treated them the way I should and give them what I should.
>
> Q. That's Mr. Starkey that said that?
>
> A. Yes, Mr. Starkey said this, and so, the truck driver, well Mr. Starkey told me that the truck driver said, *didn't we know that we wouldn't have steady work if we went union, because he was just up at a plant that day, that had employed over a hundred people before that, they went union and now there was only twenty-five and the two people that was loading the truck that day for him, was sent home as soon as they got done loading the truck, because of no work.*
>
> And he asked me, what I though of that and I kind of just shrugged and said, well I don't know. *So then he said, well, if you girls would just give me a chance to prove that I can do better, I would, and that's it.*

Cartright said Vice President Starkey then handed her a copy of General Counsel's Exhibit 6. Starkey admitted he gave Cartright a copy of General Counsel's Exhibit 6 but denied he said anything else to her.

Employee *Regina Wodzinski* was employed by Respondent from April 1977 until the present time. She testified that on July 14, 1978, the day of the election, she asked Vice President Starkey if the union came in would the Company lose work, and he said the Company possibly would not have as much work. *He then asked her if she signed a union authorization card and she said yes,* but she did not want to. She said he *then told her, the employees did not need the people in Baltimore, they should have come to him and he told her he would appreciate it if she would vote "No."* He gave her a copy of General Counsel's Exhibit 6. Starkey admitted he gave Wodzinski a copy of General Counsel's Exhibit 6 but denied he said anything to her not included in that exhibit.

Employee *Linda Malcomb* was employed by Respondent from April 14, 1976, to the present time. She testified that she signed a union authorization card on March 28, 1978 (G.C. Exh. 7(ss)). She further stated that she attended meetings called by the Company and *did not recall* Respondent *saying it would close the plant or lay off the girls.* On July 14, she said Vice President Starkey gave her a copy of General Counsel's Exhibit 6, and that no one asked her how she was going to vote, or any other question about the Union. She said someone from management gave her a copy of General Counsel's Exhibits 3(a) and (b).[7] Everybody in the plant was given a copy.

I therefore conclude and find, upon the foregoing credited testimony, that in late June and on July 14, 1978, *Respondent asked Maxine Johnson to vote "No" in the union election*; that in April 1978, *Respondent suggested that employee Deborah Lee request the Union to return her authorization card* in the same faith that it was given, that *Respondent coercively interrogated Lee by asking Lee if she had attended a union meeting* and, when she replied, "No but she had signed a union card, "*Respondent said* she was dumb for signing a card, that it was like signing a blank check; that on April 6, 1978, Respondent (Shroyer) threatened Victoria Jackson by telling her she

[7] I credit the above testimony of witnesses *Victoria Jackson, Pamela Anderson, Linda Cartright,* and *Regoma Wodzinski* not only because I was persuaded by their demeanor that they were testifying truthfully, but also because their individual conversations held, either with Respondent President Anthony Cassela, Vice President Clifton Starkey, or Manager Opal Shroyer, all followed a relatively consistent antiunion pattern on conduct. Moreover, Respondent's (Cassela, Starkey, and Shroyer) response to these detailed conversations with the above-named witnesses was either, it could not recall, or a general denial, without further explanations. I was not at all persuaded by the great lack of recall, and the brief, selective, and defensive answers to questions by Respondent witnesses. Likewise, I was persuaded by the cautious, brief, and significant lack of recall of Linda Malcomb, who is still in Respondent's employ, that she was obviously partial to management, and I discredit her testimony in this regard.

(Shroyer) knew Jackson knew about the Union and told her (Jackson) she *should think about it, because she (Shroyer) and management were strictly against the Union; that Respondent had helped Jackson and her husband, and now Jackson should help Respondent*; that, on the day of the union election, July 14, 1978, Respondent told Jackson that *if she could not vote "No," not to hurt Respondent*, and it *accused Jackson of talking to a fellow employee who supported the Union*; that Respondent asked *Jackson to talk to other employees to oppose the Union*; that before the election on July 14, 1978, Respondent *asked Pamela Anderson if she were for or against the Union*, and it asked her if she liked the work at Respondent, and told her Respondent did not like the outsiders from Baltimore coming in and settling their disputes, that all the employees would have had to do is ask Respondent and Respondent would have given them what they wanted; that Respondent threatened to kick the Union out or close down the plant, that Respondent asked Anderson was she for or against the Union, and it told her the Union could not give the employees anything, and Respondent did not have to give what it did not want to give; that also before the election on July 1978, Respondent told employee Linda Cartright that, if the employees would just give Respondent a chance to prove itself, it could do better, and it do better; that before the election on July 14, 1978, Respondent asked employee Regina Wodzinski if she had signed a union card and told her the employees did not need the people from Baltimore, they should have come to him, and it told her Respondent would appreciate it if she (Wodzinski) would vote "No"; and that all of the above-described conduct by Respondent had a restraining and coercive effect on the exercise of rights protected by Section 7, in violation of Section 8(a)(1) of the Act.

I. *Between March 24 and July 3, 1978, Respondent Discharged Five Employees Active in the Union's Organizing Campaign*

1. The discharge of Carol Waybright

As hereinbefore discussed, Respondent discharged Carol Waybright on March 24, 1978. Respondent contended it first learned about its employee's union activities on March 24, 1978, subsequent to the discharge of Waybright. However, the credited evidence of record established that in a company called meeting after Waybright's discharge on March 24, Respondent (President Anthony Cassela) told employees it had to terminate an employee for union activities. The only employee recently terminated since the onset of the employee's union activities was Carol Waybright. In fact Waybright is the only employee, to the knowledge of nearly every witness who testified, that Respondent ever discharged.

Moreover, the credited evidence of record further shows that Respondent employs between 75 and 80 employees who work in an unpartitioned single-room plant, where the employees converse a great deal during worktime; and that the employees organizing campaign was at its peak in early March (5–20), of which a considerable portion took place within and on the parking lot of the plant, where management could have, and was established to have, observed employees distributing union literature. Under these circumstances it is clear that Respondent, by its own voluntary announcement on March 24, had knowledge of the union activity of Waybright. Knowledge of employees' union activities, including that of Waybright, is amply inferred under the theory of the "small plant doctrine," as expressed in *Wiese Plow Welding Company, Inc.*, 123 NLRB 616 (1959). Hence as previously established herein, Respondent's discharge of *Carol Waybright* was substantially, if not totally, motivated by Respondent's knowledge of her activities on behalf of the Union. As such, it was discriminatorily motivated and violative of Section 8(a)(3) and (1) of the Act.

2. The discharge of Pearl Irene Smith

Employee Pearl Irene Smith was in the employ of Respondent from January to June 4 1978. She testified that on March 24, Manager Shroyer came to her machine and some of the conversation was as follows:

> A. She came over to my machine and she said is this machine working better and I said yes, it's a lot better than the other one. And then she sat down and she said *are you for or against the union and I said, why, what union or something to that affect, and she says well, they're trying to get a union in here and she said the union is no good, they make you a lot of promises and she said she was strictly against it.*
>
> And she asked me if I was for it or against and I told her, I didn't know, it just depended on what it was about, and *she said, well; just think twice before you get involved with it, just remember, you have a paycheck and a job.*

Smith further testified that Manager Shroyer advised her that she *(Shroyer) was personally against the Union.* On May 3, 1978, she said she had a meeting of the union committee at her home; that Barbara Smith, Melodie Daugherty, Shelly Westfall, Carol Waybright, David Pringle, Maxine Johnson, a guy named Lemons, and Bob Farber, union representative, were present. On the next day (June 4), she said she and other committee members disturbed union literature on the plant's parking lot and observed Vice President Starkey and Manager Shroyer standing in the door watching them.

On May 5, Pearl Smith said she did binding work and Manager Shroyer came to her around quitting time and gave her her check and told her there would not be any work for her on Monday. From her observations, she said there was about a month's binding work, and some closing out work at the time she was laid off. However, she was called back to work on May 23 and 30 and June 4.[8]

[8] There is essentially no dispute with Smith's testimonial description of her layoff on May 5, 1978, except that Respondent contends there was no work, and Smith contends that there was about a month's binding work and some closing out work available on May 5. Smith also testified without dispute that she has performed "closing out" and other work for Respondent. I credit Smith's testimony over Respondent's (Shroyer) because I was persuaded by her rather candid manner in testifying and because the layoff was so abrupt without any established indicia that it was going

Continued

Based on the foregoing credited testimony I conclude and find that on March 25, 1978, after Manager Shroyer discussed the Union with Smith, she told Smith to think about the Union before she got involved, and just remember, she had a paycheck and a job; that management (Manager Shroyer, Vice President Starkey, and/or President Cassela) observed Pearl Irene Smith and other members of the union committee distributing union literature on the plant's parking lot on May 4, 1978; that Respondent therefore had knowledge of Smith's support for the Union on May 4, 1978; that on the very next day (May 5), Respondent (Shroyer), without any warning, gave Smith her paycheck and laid her off; that Respondent's layoff of Smith was clearly motivated by Smith's union activity and was therefore discriminatory and in violation of Section 8(a)(3) and (1) of the Act.

3. The discharge of Deborah Lee

Deborah Lee undisputedly testified that she was recalled to work on June 12 and 14. She called the plant and informed Manager Shroyer that she did not have a babysitter, and, under those circumstances, she supposed she would have to quit. However, on June 16, she told Vice President Starkey she had found a babysitter and would be able to return to work. Starkey told her she had been recalled to replace a girl who had quit, but since that time Respondent had hired a replacement and she would have to talk to Opal Shroyer. Although she requested other work, both Manager Shroyer and Vice President Starkey said they were sorry, and she was not thereafter recalled to work.

Lee testified she signed two union authorization cards, one on March 11, and the other on March 22, because she made a mistake in the date on the first one, and the Union thought she should sign another one. I credit Lee's testimonial explanation in this regard because, in every respect, it appeared that an honest mistake had occurred and I was persuaded by her demeanor that her explanation was both reasonable and truthful.

The record herein shows that the employee who Respondent contends replaced Lee was employee Oldaker, who remained in Respondent's employ only 1 month. Thereafter, the work formally performed by Lee was performed by Inspector Margaret Stanley, who the record undisputedly shows had less seniority than Lee.

Respondent had knowledge of Deborah Lee's union involvement since about April 4, 1978, when Lee, in response to President Cassela's herein found unlawful interrogation of her, advised him that she had signed a union card. Although on June 14, 1978, Lee did notify Manager Shroyer that she had to quit because she had a babysitter problem, Lee nevertheless advised Shroyer 2 days later that her babysitter problem was resolved and she was available for work. While the record shows Respondent had already replaced Lee with Oldaker, it also shows that Oldaker's stay with Respondent was brief and Respondent made no effort to recall Lee after Oldaker left, or to put her to work in another capacity while Oldaker was still employed. This is especially noted since it is well established that Respondent's history as an employer had virtually no record of layoffs or terminations prior to the lay off of JoAnn Cox and the discharge of Carol Waybright.

When the above evidence is considered in conjunction with the total evidence of Respondent's union animus and its unlawful conduct over the period of 3 months during which the employees were engaged in a union campaign, it becomes obvious that Respondent could have kept Lee in its employ or recalled her. Instead, Respondent took this opportunity to relieve its union animus by not putting her to work on June 16, or shortly thereafter because she was involved with the Union. This conclusion is particularly true when it is recalled that President Cassela told her on April 4 that she was dumb for signing a union card.

Under the above circumstances, it is clear that Respondent's refusal to put Deborah Lee to work on June 16, or to thereafter recall her, was primarily motivated by Lee's union involvement and was therefore discriminatory, and in violation of Section 8(a)(3) and (1) of the Act.

4. The discharge of Joan Ball

Employee Joan Ball undisputedly testified that she was employed by Respondent from January 18, until June 23, 1978. She distributed union authorization cards during the lunch period in the lunch room, and distributed union leaflets on the plant's parking lot on or about May 3, 1978, along with Carol Waybright, Shelly Westfall, Irene Smith, and Barbara Smith, the committee for the Union. While they were distributing leaflets on the parking lot she saw Manager Shroyer, Vice President Starkey, and President Cassela standing on the steps of the plant watching them distribute the leaflets.

In the afternoon on June 22, 1978, Ball said plant secretary Connie (Jenkins) Ware came to her machine and informed her that her daughter was critically ill and there was an emergency call in the office. Learning that her daughter, who had a baby 5 days before, was hemorrhaging, she obtained permission from Vice President Starkey to leave. On June 23, her husband called the plant at 6:30 a.m. to report that she could not report for work because she had to watch the baby, since her daughter remained in the hospital. Manager Shroyer told her husband if she (Ball) could not come to work that day, to consider herself dismissed. Ball did not contact the plant on Saturday, Sunday, or Monday to give an explanation for her absence or to inquire about her job status. Prior to this incident Ball had missed 2 days from work when her son had an operation about a month before. She said she returned to work and was not given any warning about absences or that she would be terminated for having been absent. After her husband called the plant at 6:30 a.m. she received a message from her

to occur. This is especially true since Respondent has a rather consistent history of little or no layoffs. Meanwhile, Respondent (Shroyer or Starkey) has not established a record for telling the truth in this proceeding, and I do not now credit Manager Shroyer's testimony that there was no work for Smith on May 5, 1978. Finally, Respondent's union animus is well established in this proceeding and that alone seems as a probative basis for finding that Respondent had a motive for laying off Smith.

son from Manager Shroyer that if she did not report for work that day she may consider herself as having quit.[9]

Consequently, I conclude and find that Respondent had knowledge of Ball's union activities as of May 3 or 4, 1978, when she and other union committee persons distributed union literature on the plant's parking lot; that Ball was given permission to leave work early on June 22, 1978, due to family emergency; and that when Ball, through her husband, notified Respondent on the morning of June 23 that she was unable to report to work that day because she had to keep her grandchild, whose mother was in the hospital, Respondent precipitously advised Ball without a warning that if she did not report for work that day she was dismissed.

Since Respondent's union animus so grossly manifested between March 24 and July 14 is well established, it is easily seen that Respondent's discharge of Ball is but a link in the chain of Respondent's efforts to rid itself of union organizers and supporters. This conclusion is further supported when the precipitous nature of the discharge is considered along with the parade of unlawful conduct of Respondent. It is therefore clear that Ball's discharge was solely motivated by Respondent's union animus and Ball's activities on behalf of the Union. This being so, her termination was discriminatory and in violation of Section 8(a)(3) and (1) of the Act.

5. The discharge of David Pringle

The evidence regarding *David Pringle* as an employee is virtually free from conflict in the record. Pringle was employed by Respondent from August 1976 until he was terminated by Respondent on July 3, 1978. He started his employment as a speaker and worked as a cutter for the last 1-1/2 years. As such, it was conceded by Pringle, management, and fellow workers that he did not perform the cutter position very proficiently. However, it is evident he performed the function sufficiently for a 1-1/2 years, until Respondent's complaints about his cutting increased 2 months before his termination. Interestingly, Respondent's increased complaints of Pringle's performance occurred simultaneously with the advent and intensity of the employee's organizing campaign.

Pringle testified that he solicited employees to sign union cards and he was the Union's only witness in a representation hearing before the National Labor Relations Board on May 15, 1978, Case 6-RC-8162. He was a member of the employees' organizing committee.

Pringle further testified that on July 3, 1978, the following occurred:

> A. I had finished one cut and I moved on further down the table to start another cut, and the bundler on the table went to the office and got Mr. Starkey and came back and showed him some bundles that I had that I had cut, and he came back and got me and took me up to where the bundles were, and showed them to me and told me I had messed some more up, and I was going to the office to get my check.

Pringle said, when he arrived at the office, his check was already prepared. Starkey signed it and gave it to him. Under further examination he acknowledged that he ruined cuts two or three times a week since he became a cutter (August 1977 to July 3, 1978). Prior to May 5, 1978, he said management never threatened him with discharge for ruining cuts. He said he received *his first warning about cuts in April 1978*, although he had ruined cuts in March. On several occasions, he said he asked either Tip or Clifton Starkey whether he could be assigned on spreading or making off, or some other job, and the answer was, "No." He said the majority of the warnings to him about bad cuts occurred after March 5, 1978; and that Starkey would simply tell him, if he did not straighten up and do right, he would be fired. On other occasions Starkey told him he thought he (Pringle) was trying to put him out of business or sabotage the Company. He acknowledged that Yvonne Hines, a bundler, told him he was making too many mistakes.

Counsel for the Respondent attempted to impeach witness Pringle with his testimony given in the representation hearing, as compared with his testimony in the instant proceeding. However, I do not believe that Pringle's answers in the instant proceeding indicated that he was not telling the truth on either occasion. Any discrepancies in his testimony I find to have been inadvertent, and reasonably and truthfully explained.

Respondent (Starkey) testified that he frequently warned Pringle about his cutting and asked him to take his time. Whenever he warned Pringle about his poor cutting, Pringle would simply laugh to his (Starkey's) face or behind his back.

The evidence of record on David Pringle's work performance as a cutter is essentially consistent. Since Respondent contends it terminated Pringle on July 3, 1978, because of his poor work performance after repeated warnings, the question raised for determination is whether Pringle's termination was for cause (poor work performance), or was it in any way motivated by his activities on behalf of the Union, of which fact the Respondent was fully aware.

While there is no dispute that David Pringle was not a good cutter and that Respondent could have terminated his employment for inefficiency, it is particularly observed that Respondent did not terminate him for 1-1/2 years, and in fact had not terminated any employee prior to March 24, 1978, when it terminated Carol Waybright. Instead, Respondent kept Pringle in its employ, and tolerated whatever degree of his inefficiency, until after the peak of the employees' organizing campaign in March, including Pringle's testifying in a representation hearing on May 15, and 11 days before the union election on July 14, 1978. It is further observed that Pringle is the fifth active supporter of the Union terminated by Respondent between March 24 and July 3, 1978, during the employees' organizing campaign and within less than a fortnight of the upcoming union election. Meanwhile, during the months of March, April, May, June, and July,

[9] The above facts are essentially free of dispute. If Respondent denies having seen Ball and other union committee members distributing union leaflets on the plant's parking lot on or about May 3, I discredit its denial. Ball's testimony in this regard is corroborated by Pearl Irene Smith and I find it reasonable and credible.

the plant was permeated with union animus and a chain of unlawful conduct by Respondent.

Presumably, Respondent would ask that the above-described circumstances be attributed to coincidence. However, human experience discredits such an hypothesis. Moreover, I find that the evidence more than amply establishes that Respondent's termination of David Pringle was substantially, if not totally, motivated by Pringle's activities on behalf of the Union, and additionally for his having testified on behalf of the Union on May 15. Such termination was therefore discriminatory and in violation of Section 8(a)(3) and (1), and Section 8(a)(4), respectively, of the Act.

Finally, Respondent contends its layoff of Deborah Lee and its termination of Carol Waybright, Pearl Irene Smith, Joan Ball, and David Pringle were for cause, and not for their interest or activities on behalf of the Union. However, I find that the separate reasons advanced by Respondent for its actions were not the real, sole, nor primary reason for its layoff and discharge of the aforementioned employees, but were a mere pretext to conceal the unlawfulness of its actions.

Employees in the Appropriate Unit for Collective Bargaining on April 24 and 25, 1978

The parties stipulated to the appropriateness of the unit as described under section A herein. The record (G.C. Exh. 11) shows that on April 24 and 25, 1978, Respondent had 79 employees about whom there was no question as to their inclusion in the appropriate unit. General Counsel's Exhibit 11 also list the names of three persons about whom there was some question as to their inclusion in the appropriate unit. Those employees were: Carol Waybright, who was discharged by Respondent on March 24, 1978, and Tip Starkey, son, and Carol Jo Tenney, daughter, of Vice President and Co-Owner Clifton Starkey. The credited evidence of record established that between February 9 and April 25, 1978, employees, including dischargee Carol Waybright, signed union authorization cards for the Union.

Although counsel for Respondent in his examination of the witnesses implied, and at least witnesses Paulette Russell and Carolyn Lance indicated in their testimony, that the Union engaged in fraudulent misrepresentations in its card solicitation campaign, Respondent thereupon attempted to establish that several union cards were improperly executed and were therefore invalid. However, I find that the cards involved were single-purpose cards authorizing the Union to act as the signatory's collective-bargaining representative, and for checkoff, membership, and dues. I further find there was no credible evidence of misrepresentation by the Union in soliciting the signatures of the employees. It is noted that a clear statement of the purpose of the cards is printed on its face, and, standing alone, is self-explanatory.

Respondent has failed to establish that any of the signatories of the cards were unable to read, or that any union solicitor engaged in any fraudulent conduct in the process of securing the signature of any signatory. In the absence of such evidence, it is presumed that each signatory read and understood the contents of the card. I find no merit in the testimony of Paulette Russell, Carolyn Lance, or any other witness who implied or testified that the Union engaged in improper conduct in its solicitation campaign. Moreover, I discredit the testimony of Paulette Russell, Carolyn Lance, and any other witnesses who so testified, because, not only are their versions unique among all of the witnesses who testified to the contrary, but their versions are repugnant to the explicit language on the face of the cards. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969).

The parties stipulated to the admission of General Counsel's Exhibit 11 which listed the names of 79 employees whose inclusion in the unit is uncontested. Adding to that list (G.C. Exh. 11) names of the contested persons (Waybright, Tip Starkey, and Tenney) brings the total number to 82 employees. Hence it is clear that on both dates, April 24 and 25, the Union represented a majority (44 to 39) on April 24, and also a majority (45 to 38) on April 25, 1978. It hereinbefore having been found that Carol Waybright was unlawfully terminated on March 24, 1978, she was then, and is now, properly an employee for purposes of computing majority status of the employees. Thus, Waybright's card should be counted and she should be included in the appropriate unit, as counsel for the General Counsel contends.

Counsel for the General Counsel argues that Tip Starkey, son of Vice President and Co-Owner Clifton Starkey, should not be included in the bargaining unit because his interests are more closely aligned with those of management than with those of the employees. On the other hand, counsel for Respondent argues that Tip Starkey should be included within the unit since he does not enjoy any special status and has a community of interest with the other employees. In this regard, the essentially undisputed and credited testimony of record shows that Tip Starkey has been in the employ of Respondent for 5 years as a mechanic and cutter; that Tip earns $3.70 per hour as of January 1, 1978, approximately 80 cents above the minimum wage paid to all other nonsupervisory employees of Respondent; that, in the absence of supervisors in the plant, Tip Starkey is in charge of other employees; that he has always possessed a set of keys with which he would open the plant on Saturdays, and, most recently, he has been using the keys to open the plant during weekdays; that he has interviewed prospective employees and has recommended that they be hired; and that the record is not quite clear as to whether Tip Starkey resided in home quarters provided for by himself, or with some assistance from his father, at the time of the representation hearing held on May 15, 1978.

The record shows that Vice President and Co-Owner Clifton Starkey, father of Tip Starkey, owns 34 percent of the shares of Respondent, President Anthony Cassela owns 33 percent, and Jane Starkey, sister-in-law of Clifton Starkey, owns 33 percent. Counsel for the Respondent argues that since Clifton Starkey is not a majority stockholder of Respondent, Tip Starkey's interest should not be aligned with that of management's citing *Cherrin Corp.* v. *N.L.R.B.*, 349 F.2d 1001 (6th Cir. 1965), cert. denied 382 U.S. 981 (1966). However, it is observed that, although Vice President Starkey owns only 34 shares of Respondent, when that percentage is considered along

with the fact that 33 shares are owned by Jane Starkey, sister-in-law of Clifton Starkey and aunt of Tip Starkey, as well as with the several of the above-described functions carried out by Tip Starkey, it is clear that Tip Starkey's interests are more closely aligned with those of management than with those of employees included in the unit.

Although there is no consanguine relationship between Tip Starkey and Jane Starkey, the latter is nevertheless the aunt of Tip Starkey, and when her 33 shares are combined with that of his father's 34 shares, they jointly own 67 percent of the corporate Respondent. Nevertheless, aside from this factor, when Clifton Starkey's ownership is considered, individually or jointly (with that of Jane Starkey's as co-manager), in conjunction with the aforedescribed function performed by Tip Starkey, and the fact that Clifton Starkey is involved in the day-to-day management of the Respondent, it appears to be quite certain that Tip Starkey would have a more attentive and sensitive ear to the day-to-day work concerns of Respondent. Additionally, Tip may even have access to special privileges, favorable working conditions, and personnel information to which other employees will not have access. *Economy Cash Stores, Inc., a/k/a Cardinal Food Town*, 202 NLRB 930 (1973).

Pursuant to the above evidence, reasons, and cited authority, I conclude and find that Tip Starkey's interests are more aligned with those of management, and that he does not enjoy the same community of interest with employees as do other employees and, therefore, should not be included in the appropriate unit.

Counsel for the General Counsel takes no position with regard to the employment status of Carol Jo Tenney, the emancipated and economically independent daughter of Vice President and Co-Owner Clifton Starkey. In this regard, it is particularly noted that Carol Jo Tenney does not exercise any managerial functions in the plant but only work duties like those of her fellow employees. It was also established in the record that she has not lived in her father's house for several years, but in fact maintains a home independent and separate from his. Since her father, Clifton Starkey, is a minority shareholder, even though her aunt, Jane Starkey, holds 33 shares in Respondent, she does not perform any managerial functions in the plant as does her brother, Tip Starkey. I therefore find that Carol Jo Tenney has a community of interest more aligned with her fellow employees, and that her relationship with management is not such that it may be found that her interests are more aligned with those of management. For these reasons, she should be included in the appropriate unit.

Since Tip Starkey has been found not to be included in the appropriate unit, and Carol Waybright has been found to be an employee in the appropriate unit, the total number of employees in the unit on April 24 and 25, 1978, were 81 and 82, respectively. It is therefore clear that since the Union held 44 signed authorization cards on April 24, 1978, the Union clearly held a majority status of Respondent's employees on that date, as well as when it held 45 signed cards on April 25, 1978.

Consequently, I conclude and find that on April 24, and more particularly on April 25, 1978, the Union represented a majority of Respondent's employees in the appropriate unit heretofore described. *N.L.R.B* v. *Gissel Packing Co., Inc. supra; Cumberland Shoe Corporation*, 144 NLRB 1268, enfd. 351 F.2d 917 (6th Cir. 1965); *Goodyear Tire and Rubber Company*, 138 NLRB 453 (1962).

Accordingly, Respondent is hereby ordered to recognize and, upon request, bargain collectively with the Union herein, from April 25, 1978, the date on which the Union represented its greatest majority of Respondent's employees.

Additionally, it is well established by the credited evidence of record, upon which I find, that the Union's card solicitation campaign commenced on February 9, 1978; that between March 5 and 20, 1978, the Union obtained its largest number of signed authorization cards; that the record is replete with evidence showing that commencing on March 24, 1978, Respondent embarked on the commission of various and numerous unfair labor practices, which continued until a few minutes before the Union's election on July 14, 1978; and that the consequential magnitude of such unfair labor practices interfered with the election process and caused or induced the likelihood of dissipating the Union's majority status and precluding the holding of a fair election.

I further find that Respondent's aforementioned unlawful conduct constituted the commission of independent, substantial, and pervasive unfair labor practices disruptive of election conditions or processes, with the likelihood of preventing a free election and causing the dissipation of the Union's majority, thereby warranting the issuance of a bargaining order. *N.L.R.B.* v. *Gissel Packing Co., supra*, and *Steel-Fab, Inc.*, 212 NLRB 169 (1974).

Since the Union acquired its greatest majority (45 signed authorization cards) on April 25, 1978, Respondent is hereby ordered to recognize and, upon request, bargain collectively with the Union from April 25, 1978. Although it is clear Respondent embarked upon its course of unlawful conduct on March 24, 1978, Respondent will not be ordered to bargain with the Union as of that date, since the Union was not shown to have had a majority status before April 24 and 25, 1978. *Ultra-Sonic De-Burring, Inc., of Texas*, 233 NLRB 1060 (1977).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce. They are unfair labor practices within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

Having found that Respondent has engaged in unfair labor practices warranting a remedial order, I shall recommend that it cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

It has been found that Respondent has interfered with, restrained, and coerced its employees in the exercise of their Section 7 protected rights, in violation of Section 8(a)(1) of the Act, by coercively threatening employees with less work and layoffs, threatening employees with economic reprisal, and/or telling employees it would be futile to select the Union as their collective-bargaining representative, threatening employees by telling them it had terminated an employee and laid off another employee for union activities, telling employees not to sign union authorization cards, coercively interrogating employees concerning their union activities, membership, and sympathies, and the union activities, membership, and sympathies of other employees, soliciting employees' grievances in an effort to dissuade them from selecting the Union as their collective-bargaining representative, asking employees to tell other employees not to select the Union as their collective-bargaining representative, telling employees Respondent was against the Union and would do anything to stop the Union from becoming their collective-bargaining representative, all for the purpose of discouraging their interest in and/or support for the Union; that Respondent discriminated against its employees by discharging Carol Waybright, Joan Ball, Pearl Irene Smith, Deborah Lee, and David Pringle, in violation of Section 8(a)(3) and (1) of the Act, and by discriminatously discharging David Pringle because he either filed charges and/or gave testimony under the Act, in violation of Section 8(a)(4) and (1) of the Act; and that such unlawful conduct by Respondent prevents the carrying out of a free election and had the likelihood of dissipating the Union's majority status. The recommended Order will provide that Respondent cease and desist from engaging in such unlawful conduct and bargain with the employees' designated collective-bargaining representative, the International Ladies' Garment Workers' Union, Upper South Department, AFL-CIO; and that it offer reinstatement to Carol Waybright, Joan Ball, Pearl Irene Smith, Deborah Lee, and David Pringle to their former jobs, but, if their jobs no longer exist, to equivalent positions, and make them whole for any loss of earnings within the meaning of and in accord with the Board's decision in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977),[10] except as modified by the wording of such recommended Order.

Finally, I shall recommend that the election in Case 6-RC-8162 be set aside, in view of the bargaining order entered herein; and that Case 6-RC-8162 be dismissed.

Because of the character of the unfair labor practices herein found, the recommended Order will provide that Respordent cease and desist from in any other manner interfering with, restraining, and coercing employees in the exercise of their rights guaranteed by Section 7 of the Act. *N.L.R.B.* v. *Entwistle Mfg. Co.*, 120 F.2d 532, 536 (4th Cir. 1941.)

[10] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

CONCLUSIONS OF LAW

1. Modern Manufacturing Company, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Ladies' Garment Workers' Union, Upper South Department, AFL-CIO, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. By threatening employees on various dates between March 24 and July 14, 1978, with less work and layoffs if they selected the Union as their collective-bargaining representative, Respondent violated Section 8(a)(1) of the Act.

4. By threatening employees on various dates between March 24 and July 14, 1978, with plant closure if they selected the Union as their collective-bargaining representative, Respondent violated Section 8(a)(1) of the Act.

5. By threatening employees on various dates between March 24 and July 14, 1978, with economic reprisal and/or telling employees it would be futile to select the Union as their collective-bargaining representative, Respondent violated Section 8(a)(1) of the Act.

6. By threatening employees by telling them it had terminated an employee because of her union activities, Respondent violated Section 8(a)(1) of the Act.

7. By telling employees (in a letter) not to sign union authorization cards, Respondent violated Section 8(a)(1) of the Act.

8. By coercively interrogating employees on various dates between March 24 and July 14, 1978, about their union activities, membership, and sympathies, and the union activities, membership, and sympathies of other employees, Respondent violated Section 8(a)(1) of the Act.

9. By soliciting employees' grievances in order to dissuade them from selecting the Union as their collective-bargaining representative, Respondent violated Section 8(a)(1) of the Act.

10. By asking an employee to tell other employees not to select the Union as their collective-bargaining bargaining representative, Respondent violated Section 8(a)(1) of the Act.

11. By telling an employee it was against the Union and would do anything to stop the Union from becoming their collective-bargaining representative, Respondent violated Section 8(a)(1) of the Act.

12. By discriminatorily terminating the employment of Carol Waybright, Joan Ball, Pearl Irene Smith, Deborah Lee, and David Pringle, because they joined and/or supported the Union, Respondent violated Section 8(a)(3) and (1) of the Act.

13. By discriminatorily terminating the employment of David Pringle because he either filed charges with and/or testified in a Board proceeding on behalf of the Union, Respondent violated Section 8(a)(3) and (4) of the Act.

14. These unfair labor practices were so independent, substantial, and pervasive that they are disruptive of the election processes, precluding a fair election and warranting the issuance of a bargaining order.

15. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[11]

The Respondent, Modern Manufacturing Company, Inc., Buckhannon, West Virginia, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with less work and layoffs if they select the Union as their collective-bargaining representative.

(b) Threatening employees with plant closure if they select the Union as their collective-bargaining representative.

(c) Threatening employees with economic reprisal and/or telling employees it would be futile to select the Union as their collective-bargaining representative.

(d) Threatening employees by telling them Respondent had terminated an employee because of her union activities.

(e) Telling employees not to sign union authorization cards.

(f) Coercively interrogating employees about their union activities, membership, and sympathies, and the union activities, membership, and sympathies of other employees.

(g) Soliciting employees' grievances in order to dissuade them from selecting the Union as their collective-bargaining representative.

(h) Asking employees to tell other employees not to select the Union as their collective-bargaining representative.

(i) Telling employees Respondent is against the Union and Respondent would do anything to stop the Union from becoming the collective-bargaining representative of the employees.

(j) Discriminatorily laying off or terminating the employment of employees because they join or support the Union.

(k) Discriminatorily terminating the employment of an employee because he either files charges with and/or testifies in a Board proceeding on behalf of the Union.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Recognize and, upon request, bargain collectively from April 25, 1978, with the International Ladies' Garment Workers' Union, Upper South Department, AFL-CIO, as the exclusive representative of the employees found herein to constitute an appropriate unit, and, if an understanding is reached, embody such agreement in a written, signed contract.

(b) Offer the five discriminatees: Carol Waybright, Joan Ball, Pearl Irene Smith, Deborah Lee, and David Pringle immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights previously enjoyed, and make them whole for any loss of pay suffered by reason of the discrimination against them, with interest, in the manner described in the section of this Decision entitled "The Remedy."

(c) Tip Starkey is not a part of the appropriate unit because his interests are more aligned with those of management's than with those of the employees.

(d) Since Carol Waybright was unlawfully terminated by Respondent she remains a part of the appropriate unit.

(e) The following unit constitutes a unit appropriate for purposes of collective bargaining:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its Buckhannon, West Virginia, facility; excluding office clerical employees, sales employees and guards, professional employees and supervisors as defined in the Act.

(f) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this recommended Order.

(g) Post at Respondent's place of business, in Buckhannon, West Virginia, copies of the attached notice marked "Appendix."[12] Copies of said notice on forms provided by the Regional Director for Region 6, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not found herein.

[11] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided by Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions and Order, and all objections thereto shall be deemed waived for all purposes.

[12] In the event this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."